

35 U.S.C. 102 Conditions for patentability; novelty.

(a) NOVELTY; PRIOR ART.—A person shall be entitled to a patent unless—

- (1) the claimed invention was patented, described in a printed publication, or in public use, on sale, or otherwise available to the public before the effective filing date of the claimed invention; or
- (2) the claimed invention was described in a patent issued under section **151** , or in an application for patent published or deemed published under section **122(b)** , in which the patent or application, as the case may be, names another inventor and was effectively filed before the effective filing date of the claimed invention.

(b) EXCEPTIONS.—

(1) DISCLOSURES MADE 1 YEAR OR LESS BEFORE THE EFFECTIVE FILING DATE OF THE CLAIMED INVENTION.—A disclosure made 1 year or less before the effective filing date of a claimed invention shall not be prior art to the claimed invention under subsection (a)(1) if—

- (A) the disclosure was made by the inventor or joint inventor or by another who obtained the subject matter disclosed directly or indirectly from the inventor or a joint inventor; or
- (B) the subject matter disclosed had, before such disclosure, been publicly disclosed by the inventor or a joint inventor or another who obtained the subject matter disclosed directly or indirectly from the inventor or a joint inventor.

(2) DISCLOSURES APPEARING IN APPLICATIONS AND PATENTS.—A disclosure shall not be prior art to a claimed invention under subsection (a)(2) if—

- (A) the subject matter disclosed was obtained directly or indirectly from the inventor or a joint inventor;
- (B) the subject matter disclosed had, before such subject matter was effectively filed under subsection (a)(2), been publicly disclosed by the inventor or a joint inventor or another who obtained the subject matter disclosed directly or indirectly from the inventor or a joint inventor; or
- (C) the subject matter disclosed and the claimed invention, not later than the effective filing date of the claimed invention, were owned by the same person or subject to an obligation of assignment to the same person.

(c) COMMON OWNERSHIP UNDER JOINT RESEARCH AGREEMENTS.—Subject matter disclosed and a claimed invention shall be deemed to have been owned by the same person or subject to an obligation of assignment to the same person in applying the provisions of subsection (b)(2)(C) if—

- (1) the subject matter disclosed was developed and the claimed invention was made by, or on behalf of, 1 or more parties to a joint research agreement that was in effect on or before the effective filing date of the claimed invention;
- (2) the claimed invention was made as a result of activities undertaken within the scope of the joint research agreement; and
- (3) the application for patent for the claimed invention discloses or is amended to disclose the names of the parties to the joint research agreement.

(d) PATENTS AND PUBLISHED APPLICATIONS EFFECTIVE AS PRIOR ART.—For purposes of determining whether a patent or application for patent is prior art to a claimed invention under subsection (a)(2), such patent or application shall be considered to have been effectively filed, with respect to any subject matter described in the patent or application—

- (1) if paragraph (2) does not apply, as of the actual filing date of the patent or the application for patent; or
- (2) if the patent or application for patent is entitled to claim a right of priority under section [119](#) , [365\(a\)](#) , [365\(b\)](#), [386\(a\)](#) , or [386\(b\)](#) , or to claim the benefit of an earlier filing date under section [120](#) , [121](#) , [365\(c\)](#) , or [386\(c\)](#) based upon 1 or more prior filed applications for patent, as of the filing date of the earliest such application that describes the subject matter.

35 U.S.C. 102 (pre-AIA) Conditions for patentability; novelty and loss of right to patent.

A person shall be entitled to a patent unless —

- (a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for patent, or
- (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of the application for patent in the United States, or
- (c) he has abandoned the invention, or
- (d) the invention was first patented or caused to be patented, or was the subject of an inventor's certificate, by the applicant or his legal representatives or assigns in a foreign country prior to the date of the application for patent in this country on an application for patent or inventor's certificate filed more than twelve months before the filing of the application in the United States, or
- (e) the invention was described in — (1) an application for patent, published under [section 122\(b\)](#) , by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States

before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for the purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language; or

(f) he did not himself invent the subject matter sought to be patented, or

(g) (1) during the course of an interference conducted under section 135 or section 291 , another inventor involved therein establishes, to the extent permitted in section 104 , that before such person's invention thereof the invention was made by such other inventor and not abandoned, suppressed, or concealed, or (2) before such person's invention thereof, the invention was made in this country by another inventor who had not abandoned, suppressed, or concealed it. In determining priority of invention under this subsection, there shall be considered not only the respective dates of conception and reduction to practice of the invention, but also the reasonable diligence of one who was first to conceive and last to reduce to practice, from a time prior to conception by the other.